UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 154—September Term, 1965.
(Submitted November 10, 1965
Decided November 26, 1965.)
Docket No. 29789

UNITED STATES OF AMERICA,
Appellee,

—v.—

ALBERT P. MORETTI,
Appellant.

Before:

LUMBARD, *Chief Judge,*
FRIENDLY and SMITH, *Circuit Judges.*

Defendant, having been charged in a two-count information, in the District Court for Connecticut, with willful failure to pay the special occupational tax relating to wagers imposed by 26 U. S. C. §4411 in violation of 26 U. S. C. §7203, changed his plea of not guilty to one of *nolo contendere* on one count, and appeals from the resulting conviction by Judge Clairie. Affirmed.

W. PAUL FLYNN and FRANK J. RACCIO, New Haven, Connecticut, *for Appellant.*
JON O. NEWMAN, United States Attorney for the District of Connecticut, *for Appellee.*

PER CURIAM:

Albert P. Moretti was arrested on October 8, 1964, in the course of the raids relating to enforcement of the federal wagering tax, at Bridgeport, Connecticut, which have resulted in a number of appeals to this Court. Represented by counsel and duly questioned by Judge Clarie, he changed a plea of not guilty to one of *nolo contendere* to one count of a two-count information charging, under 26 U. S. C. §7203, willful failure to pay the special occupational tax relating to wagers imposed by 26 U. S. C. §4411. The other count was then dismissed at the Government's request. Moretti appeals from the resulting judgment of conviction on two grounds: (1) that the federal wagering tax statutes violate the privilege against self-incrimination conferred by the Fifth Amendment; and (2) that the search of his apartment, which produced evidence on which the prosecution was based, was unlawful in that it was not authorized by the forcible entry provisions of 18 U. S. C. §3109 because the arresting officers were not refused entry, and violated the Fourth Amendment because the affidavits supporting the search warrant were insufficient to establish probable cause.

The first contention, which the Government concedes to be open despite the plea of *nolo contendere,* has been decided adversely to Moretti, so far as this Court is concerned, by *United States* v. *Costello,* —— F.2d —— (1965), slip opinion 3319 at 3322-25, and *United States* v. *Grassia.* —— F.2d. ——, this day decided. The second contention does not survive the plea. *Thomas* v. *United States,* 290 F.2d 696 (9 Cir. 1961), motion for leave to file petition for certiorari denied, 368 U.S. 964 (1962); see *United States ex rel. Boucher* v. *Reincke,* 341 F.2d 977, 980-81 (2 Cir. 1965). There is no force in Moretti's contention that since he could not have appealed from the denial of his motion to suppress the evidence obtained by the

search, *DiBella* v. *United States*, 369 U.S. 121 (1962), refusal to hear him now would frustrate assertion of a constitutional right; he could have preserved all his rights by standing trial and raising a proper objection to introduction of the fruits of the search if the Government chose to offer them.

Affirmed.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 105—September Term, 1965.

(Argued October 28, 1965 Decided November 26, 1965.)

Docket No. 29791

UNITED STATES OF AMERICA,

Appellee,

—v.—

ALFRED GRASSIA,

Appellant.

Before:

LUMBARD, *Chief Judge,*

FRIENDLY and SMITH, *Circuit Judges.*

Defendant, having been charged in a two-count indictment, in the District Court for Connecticut, with willful failure to pay the special occupational tax relating to wagers imposed by 26 U. S. C. §4411, in violation of 26 U. S. C. §7203, changed his plea of not guilty to one of *nolo contendere* on one count, and appeals from the resulting conviction by Judge Clarie. Affirmed.

JACOB D. ZELDES (David Goldstein, Bridgeport, Conn., on brief), *for Appellant.*

JON O. NEWMAN, United States Attorney for the District of Connecticut, *for Appellee.*

FRIENDLY, *Circuit Judge*:

This is another appeal stemming from the raids relating to enforcement of the federal wagering tax at Bridgeport, Connecticut, on October 8, 1964. See *United States* v. *Costello*, —— F.2d —— (2 Cir. 1965), *United States* v. *Piccioli*, —— F.2d —— (2 Cir. 1965), and *United States* v. *Markis*, —— F.2d —— (2 Cir. 1965). Alfred Grassia, represented by counsel and duly questioned by Judge Clarie at a term of the District Court for Connecticut at Hartford, to which, at his request, his case had been transferred for trial on his not guilty plea, pleaded *nolo contendere* to one count of a two-count indictment charging, under 26 U. S. C. §7203, willful failure to pay the special occupational tax relating to wagers imposed by 26 U. S. C. §4411. The other count was then dismissed at the Government's request. His points on appeal from the resulting conviction fall into two categories. The first repeats the same

constitutional attacks on the federal wagering tax statutes that were advanced in the earlier cases. His other point is that the conscious generation of publicity by the Government and statements by Chief Judge Timbers in the course of other proceeding in January and February, 1965, prior to Grassia's change of plea,[1] see *United States* v. *Costello, supra,* —— F.2d at ——, slip opinion at 3325-26; *United States* v. *Piccioli, supra,* —— F.2d ——, slip opinion at 3340-41, so prejudiced his opportunity for a fair trial that the indictment should have been dismissed.

The first group of contentions, challenging the constitutionality of the federal wagering tax statutes, survive the plea of *nolo contendere,* as the Government concedes. But, so far as this Court is concerned, they have been determined adversely to Grassia by *United States* v. *Costello, supra,* —— F.2d ——, slip opinion, 3322-25. Recognizing that the rationale of *Albertson* v. *Subversive Activities Control Board,* —— U.S. —— (1965), announced subsequent to our *Costello* opinion, may lead the Supreme Court to overrule its previous decisions in *United States* v. *Kahriger,* 345 U.S. 22 (1953), and *Lewis* v. *United States,* 348 U.S. 419 (1955), insofar as these sustained the federal wagering statutes against attack on the ground of self-incrimination, we consider that issue more appropriate for that Court's determination.

As to Grassia's other contention, that his right to a fair trial was compromised by adverse publicity, the United States concedes that, at the time of the change of plea and the dismissal of the second count, counsel made clear to the prosecutor

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[1] The judge's statements were the basis of one of several motions by Grassia to dismiss the indictment or for a continuance.

and the court that Grassia intended to press the point on appeal, contrast *United States* v. *Doyle*, 348 F.2d 715, 720 (2 Cir. 1965); but it urges that a claim of the impossibility of obtaining an impartial trial is necessarily foreclosed when the defendant, freely and with the assistance of counsel, decides not to have one. Grassia responds that a defendant cannot be required to undergo a trial which the prosecution or the court has forced to occur at a place or a time that is inconsistent with the guarantees of the Sixth Amendment. His point is that the Amendment guarantees not only trial by an impartial jury but a "speedy" trial in the district where "the crime shall have been committed." He says that when this has been made impossible by the Government, as distinguished from third parties, the conventional remedies of extended continuance or change of venue are inappropriate since these involve a sacrifice of Sixth Amendment rights, and the only suitable remedy is dismissal of the indictment, thus rendering inconsequential any plea of *nolo contendere* and waiver of trial.

We do not find it necessary to consider whether a case might conceivably arise where the Government's conduct in generating publicity had been so egregious and the prejudice engendered by it so pervasive, cf. *Irvin* v. *Dowd*, 366 U.S. 717 (1961), that the drastic sanction of dismissal of the indictment would be demanded, in the interest of the particular defendant or for general therapeutic purposes, or for both. It suffices for decision here that the hurdle confronting any such claim must be exceedingly high and that Grassia does not come close to meeting it. Although we disapprove of what seems to have been needless intensification by the Government of the news of the arrests and, still more, of the unnecessary statements by the Chief Assistant United States Attorney on the two following days, see *United States* v. *Costello*, *supra*, —— F.2d at ——, slip opinion, 3326, it proved possible to obtain impartial juries

even at Bridgeport where the publicity was at its peak, see *United States* v. *Piccioli, supra,* —— F.2d at ——, slip opinion, 3336-37; *United States* v. *Markis, supra,* —— F.2d at ——, slip opinion, 3344. Criminal defendants are understandably prone to exaggerate the interest their fellow citizens take in matters of such acute concern to them. The transfer of Grassia's trial to Hartford, also within the "district," on December 4 on his request, although doubtless prudent, thus did not result from any demonstrated impossibility of obtaining a speedy trial by an impartial jury in Bridgeport.[2] And although the fact that defendants arrested in the October raid were still awaiting trial rendered Chief Judge Timbers' statement of February 8, 1965, even more ill-advised than we indicated in *United States* v. *Piccioli, supra,* —— F.2d at ——, slip opinion, 3342, we are wholly unconvinced that this pronouncement, combined with the preceding publicity generated by the prosecutor and the judge, made it so plainly impossible to obtain an impartial jury in Hartford as to relieve Grassia of any need to develop the facts by adhering to his plea of not guilty and examining the venire at Hartford on a voir dire.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 481/2/3/4—September Term, 1964.
(Argued June 8, 1965 Decided October 29, 1965.)
Docket Nos. 29524/5/6/7

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2 As indicated in *United States* v. *Costello,* supra —— F.2d at ——, slip opinion, 3327, jury panels at the terms held in Bridgeport are not limited to residents of that city.

UNITED STATES OF AMERICA,

Appellee,

—v.—

FRANK COSTELLO, JAMES "TOTTO" MARCHETTI and ARTHUR GJANCI,

Appellants.

UNITED STATES OF AMERICA,

Appellee,

—v.—

FRANK COSTELLO,

Appellant.

UNITED STATES OF AMERICA,

Appellee,

—v.—

JAMES "TOTTO" MARCHETTI,

Appellant.

UNITED STATES OF AMERICA,

Appellee,

—v.—

ARTHUR GJANCI,

Appellant.

Before:

WATERMAN, FRIENDLY and SMITH,

Circuit Judges.

Appeals from judgments of the District Court for Connecticut, William H. Timbers, *Chief Judge*, convicting appellants, after a verdict, of offenses under the federal wagering tax laws. Affirmed.

PHILIP R. SHIFF, New Haven, Conn. (Adrian W. Maher, on brief) *for Appellant Frank Costello.*

JACOB D. ZELDES, Bridgeport, Conn. (Francis J. King, David Goldstein, Joseph S. Catalano, on brief), *for Appellant Marchetti.*

CARROLL W. BREWSTER (Gumbart, Corbin, Tyler & Cooper, New Haven, Conn.) Kimberly B. Cheney, on brief), *for Appellant Gjanci.*

JON O. NEWMAN, United States Attorney (Howard R. Moskof, Assistant United States Attorney, on brief), *for Appellee.*

FRIENDLY, *Circuit Judge*:

These three appeals, along with *United States* v. *Piccioli*, —— F.2d ——, and *United States* v. *Markis*, —— F.2d ——, this day decided, stem from a raid carried out by Internal Revenue Service agents and state police in Bridgeport, Connecticut, on October 8, 1964. Appellants Frank Costello, James "Totto" Marchetti and Arthur Gjanci were tried together and convicted on all counts before Chief Judge Timbers and a jury under four indictments. Three two-count indictments similar in form charged each of them with violations of 26 U. S. C.

§7203 in that, being engaged in the business of accepting wagers or receiving them for one so engaged, they wilfully failed (1) to purchase the occupational wagering tax stamp required by 26 U. S. C. §4411 and (2) to register as required by §4412. The fourth indictment charged all three with conspiring to fail to purchase the occupational tax stamps. Costello and Marchetti received concurrent one-year prison sentences and $10,000 fines in the conspiracy case and under Count 1 of their individual indictments; the imposition of sentence was suspended and probation for two years was imposed under Count 2. Gjanci's sentences differed in that the fine was $2,500.

Certain points are common to the three appeals and, to some extent, to the two others mentioned. After outlining the facts of this case, we shall deal first with these common points and then consider arguments peculiar to various appellants.

In the summer of 1964 Special Agent John Ripa of the I. R. S. was detailed to work in Bridgeport as an undercover agent, posing as a person wishing to make numbers and horse bets and later as a would-be bookmaker. He placed numerous bets with Gjanci and Marchetti at the Lafayette Diner or, in some instances with respect to Gjanci, at the Greek Coffee House. On October 2, he placed bets with Costello, paying with two marked $20 bills which were found in Costello's pocket on the latter's arrest. Earlier, on September 3, he had asked Gjanci if he could set up an arrangement to turn in bets and receive a commission. Gjanci said he would speak to Marchetti to arrange this, and also that he would talk to his "bosses—Totto and Frank" about letting Ripa place bets at a local variety store; Gjanci referred to Costello as the "big boss of Bridgeport." On September 9, Marchetti arranged for Ripa to "book on 50%" with "Tony," with settlement to be made with Marchetti. On several later instances Costello made in-

quiries and gave directions whence the jury could infer that he was indeed "a boss" — if not indeed "the boss," in the enterprise. At trial Costello denied any involvement in the wagering business; Marchetti admitted accepting some bets from Ripa but denied others and also denied Costello's involvement; Gjanci did not testify.

I.

Appellants' most basic point concerns the constitutionality of the federal wagering tax. Recognizing that these provisions were sustained in *United States* v. *Kahriger*, 345 U.S. 22 (1953), appellants say their situation differs in two respects. One is that statements of the prosecutor and the judge demonstrated that the purpose of the Government's applying the statute against them was not to collect revenue, concededly the only available source of federal power, but to promote the enforcement of state laws against gambling; the other is that the enlargement of the self-incrimination clause of the Fifth Amendment to include federal compulsion of the admission of crime against the states, see *Murphy* v. *Waterfront Comm'n*, 378 U.S. 52, 53 n. 1, 77-78 (1964), overruling *United States* v. *Murdock*, 284 U.S. 141 (1931), and recent emphasis that the clause embraces all statements save those that "cannot possibly" tend to incriminate, see *Malloy* v. *Hogan*, 378 U.S. 1, 12 (1964), place the *Kahriger* holding on self-incrimination in question.[1]

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1 Marchetti makes an additional argument based on the 1958 amendment, 72 Stat. 1304, which added to §4401(c) a provision that any person required to register under §4412 who receives wagers for or on behalf of another without having registered the name and residence of the latter as §4412(a)(3) requires, shall himself be liable for the tax on wagers to the extent of his receipts. He contends that since §4412 requires registration by persons required to pay the special tax by §4411

With respect to the first contention, apart from questions as to what effect on constitutionality statements by prosecutors and judges can have, nothing in the present record goes materially beyond what the Supreme Court characterized in *Kahriger* as "suggestions in the debates that Congress sought to hinder, if not prevent, the type of gambling taxed." 345 U.S. at 27 n. 3. If "the verbal cellophane of a revenue measure," 345 U.S. at 38 (dissenting opinion of Mr. Justice Frankfurter), was sufficiently opaque for a majority of the Supreme Court twelve years ago, it remains so for us now. Whether the judge impermissibly allowed considerations unrelated to the nonpayment of the tax to enter into sentence, a claim raised only by Piccioli, is a different problem which we will discuss in the opinion in his case.

The contention with respect to the self-incrimination clause would be more serious if *United States* v. *Kahriger* stood alone, since whatever the stated basis for decision, the result followed so logically from the now-overruled *Murdock* doctrine. However, the Court again considered the Fifth Amendment objection in *Lewis* v. *United States*, 348 U.S. 419 (1955), which arose in the District of Columbia where wagering was a crime by federal law. The Court disposed of the argument on the basis that "If petitioner desires to engage in an unlawful business, he does so only on his own volition. The fact that he may elect to pay the tax and make the prescribed disclosures required by the Act is a matter of his choice. There is nothing com-

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and §4411 requires such payment from anyone who is liable for the percentage tax under §4401 or is engaged in receiving wagers for or on behalf of a person so liable, a cross-reference to §4412 in §4401 necessarily renders the statute circular and unintelligible. We see no force in this argument. The 1958 amendment did not affect who was required to pay the special tax and to register, see 3 U.S. Code Cong. & Ad. News 4457 (1958); it simply made persons who failed to comply with the special requirement of §4412(a)(3) liable for the tax on wagers imposed by §4401, when they would not previously have been.

pulsory about it, and, consequently, there is nothing violative of the Fifth Amendment." 348 U.S. at 422. If Congress can constitutionally require, as a condition to gambling, a registration that would show an intention to engage in a business prohibited by a federal law, we can think of no reason why it should not have the same power to require registration that would give notice of an intention to engage in activity made illegal by the laws of a state; and the probability of incrimination for future or even past acts, however great, is irrevelant on the Court's stated theory that the registration cannot be called compulsory. It is true that both *Kahriger* and *Lewis* were decided over vigorous dissents by Justices Black and Douglas on the Fifth Amendment point. But we find no subsequent opinion reflecting on the authority or reasoning of these cases and, at least under such circumstances, it is no proper function of ours to speculate on whether the dissent of yesterday may become the decision of tomorrow. Cf. *United States* v. *Zizzo*, 338 F.2d 577, 580-81 (7 Cir. 1964), cert. denied, —— U.S. —— (1965); *United States* v. *Cefalu*, 338 F.2d 582 (7 Cir. 1964). We are therefore not required to consider other arguments on which the Government might rely, such as the lack of any claim of the privilege at an earlier stage, see *United States* v. *Sullivan*, 274 U.S. 259, 263-64 (1927); *United States* v. *Kahriger*, *supra*, 345 U.S. at 32, and the required records doctrine, see *Shapiro* v. *United States*, 335 U.S. 1 (1948); Meltzer, Required Records, the McCarran Act and the Privilege against Self-Incrimination, 18 U. Chi. L. Rev. 687 (1951).

26 U.S.C. §4411: *Imposition of tax*

There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

26 U.S.C. §4412: *Registration*

(a) Requirement — Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district —

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company — Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information — In accordance with regulations prescribed by the Secretary, he or his delegate may require

from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

26 U.S.C. §4401: *Imposition of tax*

(a) Wagers.— There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

(b) Amount of wager — In determining the amount of any wager for the purposes of this subchapter, all charges, incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax — Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name

and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

26 U.S.C. §7203: *Willful failure to file return, supply information or pay tax.*

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016) keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be quilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

18 U.S.C. §3109: *Breaking Doors or Windows for Entry or Exit*

The officer may break open any outer or innet door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority or purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

§ 53-271. *Betting on horse race*

Any person who bets upon any horse race or is is stakeholder of anything staked upon any horse race shall be fined not more than fifty dollars.

§ 53-272. *Gaming on public conveyances*

Any person who plays at any game for any valuable thing, or solicits another to do the same, upon any public conveyance, or wins or loses any valuable thing by so playing or betting on such play or by sharing in any stake or wager of others who so bet or play, shall be fined not more than two hundred dollars and imprisoned not more than six months.

§ 53-273. *Gaming house; keepers*

Any person who keeps a place resorted to for the purpose of gaming, or which is reputed to be a gaming house or place frequented for the purposes of gaming, or engages in playing of any game for any valuable thing or resides in or frequents such place for such purposes, shall be fined not more than one hundred dollars or imprisoned not more than six months or both.

§ 53-274. *Gaming house; frequenters*

Any person who enters, except for a legitimate purpose, a place resorted to for the purpose of gaming, or which is reputed to be gaming house or place frequented for the purpose of gaming, shall be deemed to be a frequenter thereof and shall be subject to the penalties provided in section 53-273.

§ 53-275. *Owning faro bank*

Any person who owns, or has any share, part or interest in, any faro bank or fund, raised or established for gaming, shall be fined not more than one hundred dollars.
§ 8653.)

§ 53-276. *Witness not excused*

No person summoned as a witness on the part of the state, in any prosecution under section 53-273, 53-274 or 53-275, shall be excused from testifying because his evidence may tend to disgrace and criminate him; nor shall he thereafter be prosecuted for anything connected with the transaction about which he so testifies.

§ 53-277. *Gaming in general*

Any person who plays at any game elsewhere than on a public conveyance or in a reputed gaming house, for any valuable thing, shall be fined not more than five dollars.

§ 53-278. *Keeping billiard table or slot machine for gambling purpose*

Any person who keeps a billiard table which is used for the purpose of gaming, or a slot machine which is used or designed for the purpose of a lottery or gaming, or which is used or designed to discharge with or without merchandise any tokens that may be used for further operation of a slot machine or for exchange, or which is used or designed to display any symbol entitling any person by reason of such display to receive merchandise or money, shall be fined not more than five hundred dollars or imprisoned not more than one year or both. Any person who collects or receives any money from a billiard table

or a slot machine, or for the use thereof, while the same is kept or used as herein provided, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

§ 53-279. *Arrest of keeper of gambling equipment; seizure of device*

Any sheriff, deputy sheriff, constable, chief of police or police officer may, within his precinct, arrest, without a warrant, any person whom he finds in possession of any slot machine, gambling device or other equipment, paraphernalia, papers, books or money, used for gambling, or used or designed in violation of the provisions of section 53-278, and seize such slot machine or other device found in the possession of such person, and may detain such person and such device in some place of safe-keeping until warrants can be procured for the arrest of such person and the seizure of such slot machine or other device. The officer making such arrest or seizure shall immediately make complaint to the proper prosecuting officer, who shall forthwith make his written complaint to some judge having jurisdiction, and such judge shall issue his warrant, based on such complaint, and in case of seizure, action shall then be taken thereon pursuant to the provisions of sections 54-33 and 54-35.

§ 53-295. *Pool selling*

Any person, whether as principal, agent or servant, who owns, possesses, keeps, manages, maintains or occupies, or assists in keeping, managing, maintaining or occupying, any building, room, office, park, ground, enclosure or place with apparatus, books or boards or any device for the purpose of making, recording or registering bets or wagers, or of buying or selling pools upon the result of any trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the

result of any game, competition, political nomination, appointment or election, whether such trial, contest, game, competition, nomination, appointment or election takes place either within or without this state, or where pool selling of any kind, either directly or indirectly, is permitted or carried on, or in which the business of transmitting money to any race track or other place there to be placed or bet on any horse race, game, sport, competition, nomination, appointment or election, whether within or without this state, is permitted or carried on in any manner, and any person who keeps a place which is reputed to be a place resorted to for the purpose of selling pools upon the result of any election, and any person who makes, records or registers any such wagers or bets, or buys or sells, or is concerned in buying or selling, any such pools, or in carrying on the business of the transmission of money to any race track or other place there to be bet or placed on any horse race, game, sport, competition, nomination, appointment or election, whether within or without this state, and any person who, being the owner, lessee or occupant of any building, room, park, ground, enclosure or place, or part thereof, knowingly permits the same to be used or occupied for any such purpose, shall be fined not more than five hundred dollars or be imprisoned not more than one year or be both fined and imprisoned; and each day of such owning, keeping, occupying, permitting or transmitting shall constitute a separate offense. Any person who becomes the custodian or depositary of any pools, money, property or thing of value, in any manner wagered or bet upon such result, or of any apparatus of any kind used for the purpose of assisting in buying or selling any such pools or making any such wagers or bets, shall be punished in like manner. The provisions of this section shall not prohibit the giving of purses or premiums for any trial or contest of skill, speed or endurance of man, beast, bird or machine and the charging of an admission or entrance fee to any contestant in any such trial or contest.

§ 53-296. *Baseball or football pools*

Any person who, by himself, his servant or agent, directly or indirectly, makes any pool, wager or bet upon a football or baseball game, or upon any element thereof, shall be fined not more than one hundred dollars for the first offense and not more than one thousand dollars or imprisoned not more than one year or both for any subsequent offense.

§ 53-297. *Sale or lease of implements to be used in pool-selling*

Any person, whether acting for himself or as agent or servant, who sells, leases, lends or gives to the owner of any pool room, or to the servant or agent of any such owner, or who installs or operates in any room or building, any telegraph, telephone or ticker instrument or machine, or other similar apparatus, with knowledge or intent that such instrument, machine or apparatus is to be used for receiving, transmitting or recording bets or wagers, or for receiving, transmitting or recording the name of any horse or jockey participating in horse-racing upon which bets are or are to be placed, and any owner or lessee of any room or building in which pool-selling of any kind, either directly or indirectly, is permitted or carried on, or in which wagers are placed upon any game, sport, competition, nomination, appointment or election, within or outside this state, who permits the operation of any such machine, instrument or apparatus in such room or building after notice thereof from any officer of the community in which such room or building is situated, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

§ 54-197. *Conspiracy*

Any person who combines, confederates or agrees with another or others to accomplish any unlawful object by lawful

means, or any lawful object by unlawful means, or any unlawful object by unlawful means, if one or more of such persons do any act in furtherance of such combine, confederation or agreement, shall be fined not more than five thousand dollars or imprisoned not more than fifteen years or both, provided, if the crime which is the object of such combination, confederation or agreement is a misdemeanor, such person shall be subject to the same penalty as is provided by statute for the commission of the misdemeanor. No officer or member of any lawful organization shall he held liable for the unlawful acts of individual officers, members or agents of such organization except upon proof of participation in or authorization of such acts or of the ratification thereof.

UNITED STATES OF AMERICA *vs.* The premises known as Apartment C-9, being on the third floor on the North side of the building known as the Shelton Apartments, 2225 Main Street, Bridgeport, Connecticut.	Commissioner's Docket No. 1 Case No. 424 Affidavit for Search Warrant

AFFIDAVIT FOR SEARCH WARRANT

I, Thomas E. Grillo, being duly sworn according to law, depose and say that I am a Special Agent assigned to the Intelligence Division of the Internal Revenue Service, United States Treasury Department at Bridgeport, Connecticut, and I have devoted a great deal of time and work in investigation and undercover work in connection with violations of the Wagering Tax Laws, and in particular, those violations having to do with horse racing, numbers, lotteries, sporting events and similar gambling activities, and as a result I am familiar with

practices, methods, and operations of horse betting, lotteries, numbers betting and sporting event betting which is conducted contrary to and in violation of the law.

Since August 1963, I, and other Special Agents of the Internal Revenue Service, have been assigned to investigate violations of the Wagering Tax Laws in the area of Bridgeport, Connecticut.

As a result of this investigation, I have reason to now believe that on the premises hereinbefore described, there are now being concealed certain records, papers, writings, slips, radios, books, newspapers primarily reporting results and information on horse races and other sporting activity, markings, writing materials, racing forms, cash monies, machines and equipment, all of which are being used in violation of Title 26, United States Code, Sections 4401, 4411, 4412, 7203 and 7262.

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

1. On September 22, 1964, I received information from a reliable source who had furnished reliable information to me in the past, that Albert Moretti is presently engaged in bookmaking activities with regard to horse races and numbers lotteries.

2. On July 30, 1964, I received information from another reliable source who had furnished reliable information in the past that Albert Moretti is operating as a bookmaker in Bridgeport using telephone number 367-8261.

3. The records of the Southern New England Telephone Company reveal that telephone number 367-

8261 is located at the premises known as Apartment C-9, 2225 Main Street, Bridgeport, Connecticut and is listed in the name of Albert Moretti.

4. As a Special Agent of the Intelligence Division of the Internal Revenue Service, I am familiar with the fact, from investigations in the recent past and from searches which resulted from these investigations, that a pattern of long distance toll calls to and from known and reputed bookmakers from a location used by known bookmakers is indicative of the fact that the latter premises is being used to carry on the business of bookmaking.

5. Special Agent Victor D. Palaza informed me that he had ascertained, from the long distance toll call statements of the Southern New England Telephone Company for April through September, 1964, that Albert Moretti had received 475 long distance toll calls at the above-described premises, from George Miller, Hoyt Road, Bethel, Connecticut, and that George Miller is known to be a bookmaker. Further, the long distance toll call statements of the Southern New England Telephone Company for May through August, 1964, indicated that George Miller, Hoyt Road, Bethel, Connecticut, received 64 long distance toll calls from Albert Moretti. Further, the long distance toll calls statements of the Southern New England Telephone Company for the months of May through June indicated that Albert Moretti had received, at the above-described premises, 67 long distance toll calls from Jeannette Rich, 50 George Street, West Haven, Connecticut. Jeannette Rich is known to be a bookmaker. Special Agent Palaza further informed me that he had prepared a chart reflecting long distance telephone calls between bookmaking locations, which I attach to this affidavit and which Mr. Palaza has stated is accurate. This information Special Agent Palaza gave me as a

regular course of reporting information to me, as a part of the investigation of bookmaking in the District of Connecticut.

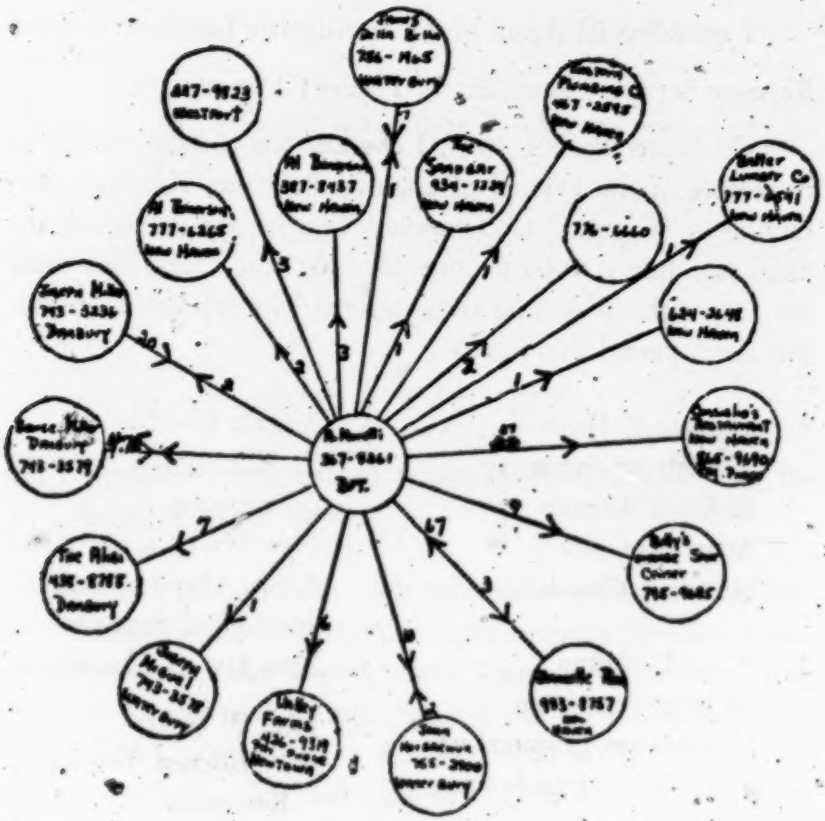
Attached and with reference to this affidavit is a supplemental affidavit of Special Agent George Politis, who has made a check of the records of the District Director of Internal Revenue in Hartford, Connecticut, which records reflect that only 8 Wagering Occupational Tax Stamps have been issued for the current fiscal year, and that the names of none of the within-mentioned persons are reflected on said records.

From all the foregoing and from my experience and observations and investigations of the above, I believe and allege that the hereinbefore described premises is being used by said Albert Moretti and others to conceal and secrete certain property and equipment, as hereinbefore described, for the purpose of violating the law, as stated hereinbefore.

THOMAS E. GRILLO
Special Agent

Sworn to before me and subscribed in
my presence, Oct. 1, 1964

GEORGE C. HASTINGS
United States Commissioner



Toll Calls

Key — Outgoing 1-1-64 — 8-24-64

Incoming April - May

AFFIDAVIT

DISTRICT OF CONNECTICUT
UNITED STATES OF AMERICA } ss.:

I, George Politis, being duly sworn, depose and say:

I am a Special Agent of the Intelligence Division, Internal Revenue Service, United States Treasury Department.

On September 29, 1964, I checked the current records at the Office of the District of Internal Revenue, Hartford, pertaining to Wagering Occupational Tax Stamps issued for the fiscal year July 1, 1964 to June 30, 1965, and found that there are only eight Wagering Occupational Tax Stamps issued for this fiscal period as follows:

1. Thomas E. Forte, Sr.
   Ardsley Apartments
   32 Cook Avenue
   Apartment 309
   Meriden, Connecticut

2. Frank DePalma
   64 Highview Lane
   New Haven, Connecticut
   d/b/a Lee's Luncheonette
   102 Wooster Street
   New Haven, Connecticut

3. Dominic Sapere
   39 Judson Avenue
   East Hartford,
   Connecticut

4. Angelo Chieppo
   82 Huntington Avenue
   Extension
   New Haven, Connecticut
   d/b/a Chip's Arcade
   361 Grand Avenue
   New Haven, Connecticut

5. John B. Macri
   323 Hillcrest Terrace
   Extension
   Meriden, Connecticut

6. Charles DeMartin
   108 John Street
   East Haven, Connecticut
   d/b/a D M Variety Store
   403½ Grand Avenue
   New Haven, Connecticut

7.	Frank A. DeRosa 27 Summit Street Derby, Connecticut	New Haven, Connecticut d/b/a Elm Haven Market
8.	Eugene Marchitto 142 Howe Street	148½ Dixwell Avenue New Haven, Connecticut

GEORGE POLITIS
Special Agent

Sworn to before me and subscribed in my presence,
Oct. 1, 1964.

GEORGE C. HASTINGS
United States Commissioner

SEARCH WARRANT

To: Special Agents, United States Treasury Department, Internal Revenue Service.

Affidavits having been made before me by Thomas E. Grillo and George Politis, Special Agents, Intelligence Division, Internal Revenue Service, United States Treasury Department, that they have reason to believe that on the premises known as Apartment C-9 which is on the third floor on the North side of the building known as the Shelton Apartments at 2225 Main Street, in the City of Bridgeport, in the District of Connecticut, there are now being concealed certain records, papers, writings, slips, books, newspapers primarily reporting results and information of horse races and other sporting activity, markings, writing materials, racing forms, cash monies, machines and equipment, all of which are being used in violation of Title 26, United States Code, Sections 4401, 4411, 4412, 7203 and 7262,

and as I am satisfied that there is probable cause to believe that the property so fitted and intended to be used is being concealed on the premises above described,

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search in the daytime, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this 1st of October, 1964.

GEORGE C. HASTINGS
United States Commissioner

INFORMATION

The United States Attorney, through the Assistant United States Attorney, charges:

COUNT ONE

ALBERT P. MORETTI, of Bridgeport in the District of Connecticut, on divers dates from on or about July 1, 1964, through on or about October 8, 1964, at Bridgeport, Connecticut in said District did engage in the business of accepting wagers as defined in 26 United States Code 4421, and did engage in receiving wagers for or on behalf of a person liable for the tax on wagers imposed by 26 United States Code 4401, having wilfully failed prior to engaging in said business and receiving said wagers to pay the special occupational tax as required by 26 United States Code 4411, due and owing the United

States of America for the year ending June 30, 1965, in violation of Title 26, United States Code, Section 7203.

COUNT TWO

ALBERT P. MORETTI, of Bridgeport in the District of Connecticut, on divers dates from on or about July 1, 1964, through on or about October 8, 1964, at Bridgeport, Connecticut in said District did engage in the business of accepting wagers as defined in 26 United States Code 4421, and did engage in receiving wagers for or on behalf of a person liable for the tax on wagers imposed by 26 United States Code 4401, having wilfully failed prior to engaging in said business and receiving said wagers to register as required by 26 United States Code 4412, in violation of Title 26, United States Code, Section 7203.

F. OWEN EAGAN
United States Attorney

HOWARD T. OWENS, JR.
Assistant United States Attorney

AFFIDAVIT

STATE OF CONNECTICUT }
COUNTY OF NEW HAVEN } ss. New Haven, January 8, 1965

I, Antonio J. Lupino, state that I reside at 128 Princeton Street, Hartford, Connecticut and that I have been a Special Agent, Intelligence Division, Internal Revenue Service since March 1955.

At approximately 1:15 p.m. on Thursday, October 8, 1964, accompanied by Lt. Thomas O'Brien of the Connecticut State Police Department, armed with a search warrant I went to apartment C-9, 2225 Main Street, Bridgeport, Connecticut. After ringing the bell and getting no reply I then knocked on the door and shouted "open up. I'm a Federal Officer with a Search Warrant". There was no reply so I turned the door knob and finding the door locked I instructed Lt. O'Brien to force his way in. Lt. O'Brien used a sledge hammer and had to strike numerous times before the door finally gave way.

ANTONIO J. LUPINO

Subscribed and sworn to before me
this 8th day of January, 1965

.....

Commissioner of the Superior Court

SUPPLEMENTAL AFFIDAVIT

STATE OF CONNECTICUT }
COUNTY OF NEW HAVEN } ss. New Haven, January 14, 1965

The procedures followed by myself and the officer who accompanied me to apartment C-9, 2225 Main Street, Bridgeport, Connecticut, are as follows:

Upon arriving at the apartment I first rang the door bell. I did not get a reply. I then knocked two or three times on the door, and again I did not get a reply. I then shouted "Open up, I am a Federal officer with a search warrant", and there

was no reply so I tried the door-knob and found the door locked. I then instructed Lt. O'Brien to force his way in.

The time that elapsed after I first rang the door bell to the time I instructed Lt. O'Brien to force his way in was approximately twenty to twenty-five seconds. I felt that this period of time gave the occupant of the apartment sufficient opportunity to open the door if he desired to do so.

/s/ ANTONIO J. LUPINO
ANTONIO J. LUPINO

Subscribed and sworn to before me
this 14th day of January, 1965.

.....
Commissioner of the Superior Court

U.S. Treasury Department—Internal Revenue Service

FORM 11-C
Rev. July 1953

SPECIAL TAX RETURN AND APPLICATION FOR REGISTRY—WAGERING

(See instructions on reverse for time and place for filing return)

Return for period from ..... to June 30, 19.....
(Month, day, and year)

Check one: ☐ First return and application ☐ Renewal return and application ☐ Supplemental return and application

For District Director's Use Only

a. (Serial number)

(Date issued)

(Registration number)

Tax..... $.....
Penalty..... $.....
Interest..... $.....
Total..... $

Make remittance payable to the Internal Revenue Service. Payment may be made by cash, check or money order.

1. Name: True name .....

Alias, style, or trade name, if any .....

2. Address: Residence .....
(Number and street)

(City) (County) (State)

Business .....
(Number and street)

(City) (County) (State)

3. If this is a supplemental application, please explain and give your Special Tax Stamp No. and Registration No. (see instruction 2)

(If additional space is required for items 4, 5 (a), 5 (c), or 6, attach additional sheets, identifying each entry as to item number.)

4. If taxpayer is a firm, partnership, or corporation, give true name of members or officers.

True name	Title	Home address

5. Are you or will you be engaged in the business of accepting wagers on your own account? ☐ Yes ☐ No
(Check one)

If yes, complete (a), (b), and (c) of this item.

(a) Name and address where each such business is or will be conducted.

Name of location	Street address	City and State

(b) Number of employees and/or agents engaged in receiving wagers on your behalf .....

(c) True name, current address, and special tax stamp number of each such person.

True name	Special stamp No. in present use	Street address	City and State

6. Do you receive or will you be receiving wagers on behalf of or as agent for some other person or persons? ☐ Yes ☐ No
(Check one)

If yes, give true name and address of each such person.

True name	Street address	City and State

SIGNATURE AND VERIFICATION

I declare under the penalties of perjury that this return and/or application (including any accompanying statements or lists) has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

....., 19..... .....
(Date) (Signature)

(Show whether individual owner, member of firm, or if corporation officer, give title)